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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,353	02/23/2004	Kenneth L. Miller	04-7131	2325
63710 7590 09/05/2008 DEAN P. ALDERUCCI CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER				
HSU, RYAN				
ART UNIT		PAPER NUMBER		
3714				
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09/05/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/784,353

Applicant(s)

MILLER, KENNETH L.

Examiner

RYAN HSU

Art Unit

3714

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 22-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 22-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date 5/12/08 (2 IDS forms)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

In response to the Request for Continued Examination (RCE) under 37 CFR 1.114 filed on 1/25/08. Claims 9 has been amended and claims 36-38 have been newly added. Claims 1-38 are pending in the current application.

Election/Restrictions

The Election requirement made in the office action of March 11, 2008 has been retracted based upon the arguments made remarks of the applicant's representative submitted on May 12, 2008. In response the claims 1-38 have been reviewed below.

Claim Objections

Claim 23 is objected to because of the following informalities: claim 23 recites "the method of claim 15 further comprising...the terms of claim 15". The instance of the "terms of claim 15" cause confusion in determining what the applicant intends by the limitation. Claim 23 is already dependent upon claim 15 and has already incorporated the limitations from the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 and 22-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al. (US 5,830,068 A) and Scarne's New Complete Guide to Gambling and

further in view of Wonderland Wagering Guide (herein referred to as “WWG”) teaching the “Evening-Twin-Tri” as of April 3, 2002 and the “Tri-Super” as of December 11, 2002 as evidenced by the www.archive.org (“Wayback Machine”).

Regarding claims 1-6, 9, 15, 22-38, Brenner teaches a method and system for wagering on horse races, the method comprises the steps of receiving from each of a plurality a plurality of players respective selections of predicted winners for each of a plurality of races at a racing event and the selections available to each player permitting the player to choose horses from among the event's races. The system of Brenner provides the player with the option of choosing several different types of wagers (*ie: pick-n" and "daily double" wagers to name a few*). In placing a wager, the player selects a winner for each of the chosen wagers and the predicted winners of each event (*see col. 4: ln 30-35*). The system of Brenner also teaches the ability of paying the player if a predetermined number of the selected winners win corresponding to chosen races (*see col. 4: ln 33-42*). It is also of note that it is an inherent aspect of placing a wager to choose what wager's are to be included in an event in order to provide flexibility in a wagering system or else the player would not be able to accurately place a bet on what he/she would like to wager on. Additionally, it is noted that it is aligned with the historical tradition of horse/racing wagers to be formed into pari-mutuel pools. Additionally, Brenner teaches a system that can receive wagers for a plurality of players at the same time. As a result the wagers selected by the one player do not have to be the same wagers made by another player. Although Brenner does not explicitly recite the incorporation of forming at least a portion of each bet to form a pool and sending at least a portion of the pool to each of the identified winning players it is an inherent attribute that wagers in racing events are performed in this manner. In a teaching reference, Scarne's teaches

the premise behind horse betting wagers and how they have revolved around the use of what is known as pari-mutuel pools. These pools are created in order to derive the odds for a horse race and thus are able to generate larger prizes for wagers as well as adapt the payout 'odds' from a direct result of the wagering habits of the players involved in the pool (*see pg. 32-55*). One would be motivated to incorporate the teachings of Scarne in order to understand the different types of horse wagering bets and how they are set up in the gambling industry. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Scarne on the background of horse betting with that of Brenner to realize that the wagers that are discussed in Brenner are pooled to form a pool and the once the results from races are received one would identify a set of winning players from a plurality of players and send at least a portion of the pool to one or more identified winning players. It is also of note that the ability of receiving tracking and processing the wagers made by a plurality of players would be equivalent of the limitations a first player making a first wager, a second player making a second wager, and a third wager making a third wager. By distinguishing these steps do not further limit or change the scope of the claims as they encompass identical subject matter. Furthermore, the ability to receive an additional wager after a racing event has begun is an inherent property of race wagers. Due to the nature of the pari-mutuel pool, the odds constantly change and tracks allow the placement of bets even after the race has begun and will usually have a cut off at some point before the race is finished. However, Brenner and Scarne's are still silent with respect to the ability to create a unified wager that includes choosing winners of a non-consecutive plurality of contests from among the contests of an event. .

In an analogous gaming reference, Wonderland Wagering Guide (herein referred simply as WWG) teaches of the different options that are provided by the wagering system. WWG teaches of a wager that can be made by a plurality of players in the "exotic bets" section. WWG teaches of a wager called the "Evening Twin-Tri" and the "Tri-Super". The "Evening Twin-Tri" and the "Tri-Super" are wagers that allow the player to place a wager on a plurality of nonconsecutive races. Additionally, these wagers cause allow the player to bet on multiple contestants for each event contest and the player is paid accordingly if a predetermined number of selected contestants wins a corresponding event contest (*see 'Wonderland Wagering Guide'*). One would be motivated to incorporate such a feature as to provide the player with additional wagering options to the user. By combining the teachings of WWG with the system of Brenner and Scarne it would yield the predictable result of providing a system that greatly increased player excitement and appeal. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the features of WWG into the wagering system of Brenner and the teachings of Scarne's.

Regarding claims 7-8, Brenner teaches a method comprising the step of receiving from the player a bet on multiple contestants for a single contest and paying the player if at least one of the selected contestants places in a corresponding selected event contest (*see col. 11: ln 15-65, col. 6: ln 10-26, col. 24: ln 20-64*).

Regarding claim 14, Brenner teaches a method wherein the player must respectively select a single horse for each selected race in a "pick-n" type game (*see col. 6: ln 10-20*).

Regarding claims 11-13, 16-17, Brenner is silent with respect to teaching a wager being placed that allows a player to make a wager on a plurality of wagers on nonconsecutive races.

In an analogous gaming reference, Wonderland Wagering Guide (herein referred simply as WWG) teaches of the different options that are provided by the wagering system. WWG teaches of a wager that can be made by a plurality of players in the "exotic bets" section. WWG teaches of a wager called the "Evening Twin-Tri" and the "Tri-Super". The "Evening Twi-Tri" and the "Tri-Super" are wagers that allow the player to place a wager on a plurality of nonconsecutive races. Additionally, these wagers cause allow the player to bet on multiple contestants for each event contest and the player is paid accordingly if a predetermined number of selected contestants wins a corresponding event contest (*see 'Wonderland Wagering Guide'*). One would be motivated to incorporate such a feature as to provide the player with addition wagering options to the user. By combining the teachings of WWG with the system of Brenner it would yield the predictable result of providing a system that greatly increased player excitement and appeal. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the features of WWG into the wagering system of Brenner.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be direct to Ryan Hsu whose telephone number is (571)-272-7148. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E Pezzuto can be reached at (571)-272-6996.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, contact the Electronic Business Center (EBC) at 1-866-217-9197 (toll-free).

RH

August 27, 2008

/Robert E Pezzuto/

Supervisory Patent Examiner, Art Unit 3714